AGREEMENT FOR LIMITATION ON APPRAISED VALUE OF PROPERTY FOR SCHOOL DISTRICT MAINTENANCE AND OPERATIONS TAXES

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by and between

SAN PERLITA INDEPENDENT SCHOOL DISTRICT

and

EC&R DEVELOPMENT, LLC

(Texas Taxpayer ID # 32039451532)

Dated

December 15th, 2009

TAX LIMITATION TO BE EFFECTIVE JANUARY 1, 2010

AGREEMENT FOR LIMITATION ON APPRAISED VALUE OF PROPERTY FOR SCHOOL DISTRICT MAINTENANCE AND OPERATIONS TAXES

STATE OF TEXAS §

COUNTY OF WILLACY §

THIS AGREEMENT FOR LIMITATION ON APPRAISED VALUE OF PROPERTY FOR SCHOOL DISTRICT MAINTENANCE AND OPERATIONS TAXES, hereinafter referred to as this "Agreement," is executed and delivered by and between **SAN PERLITA INDEPENDENT SCHOOL DISTRICT**, hereinafter referred to as the "District," a lawfully created independent school district within the State of Texas operating under and subject to the Texas Education Code, and **EC&R DEVELOPMENT, LLC,** Texas Taxpayer Identification Number 32039451532 hereinafter referred to as the "Applicant." The Applicant and the District are hereinafter sometimes referred to individually as a "Party" and collectively as the "Parties." Certain capitalized and other terms used in this Agreement shall have the meanings ascribed to them in Section 1.3.

RECITALS

WHEREAS, on July 15, 2009, the Superintendent of Schools of the San Perlita Independent School District, acting as agent of the Board of Trustees of the District (the "Board of Trustees"), received from the Applicant an Application for Appraised Value Limitation on Qualified Property ("Application"), pursuant to Chapter 313 of the Texas Tax Code; and,

WHEREAS, the Board of Trustees has acknowledged receipt of the Application along with the requisite application fee as established pursuant to Texas Tax Code § 313.025(a)(1) and District Policy CCG (Local); and,

WHEREAS, the Application was delivered to the Texas Comptroller's Office for review pursuant to Texas Tax Code § 313.025(b); and,

WHEREAS, the Application was reviewed by the Texas Comptroller's Office pursuant to Texas Tax Code § 313.025(d); and,

WHEREAS, the Texas Comptroller of Public Accounts conducted an economic impact evaluation pursuant to Chapter 313 of the Texas Tax Code and has recommended approval of the Application; and,

WHEREAS, the Board of Trustees has reviewed the economic impact evaluation pursuant to Texas Tax Code § 313.025(e) and has carefully considered such evaluation; and,

WHEREAS, the Application was reviewed by the Willacy County Appraisal District established in Willacy County, Texas (the "Willacy County Appraisal District"), pursuant to Texas Tax Code § 6.01; and,

WHEREAS, on December 15, 2009, the Board of Trustees held a meeting on the Application; and,

WHEREAS, on December 15, 2009, the Board of Trustees made factual findings pursuant to Texas Tax Code § 313.025(f), including, but not limited to findings that: (i) the information in the Application is true and correct; (ii) this Agreement is in the best interest of the District and the State of Texas; (iii) the Applicant is eligible for the Limitation on Appraised Value of the Applicant's Qualified Property; (iv) each criterion listed in Texas Tax Code § 313.026 has been met; and, (*v.*) if the job creation requirement set forth in Texas Tax Code § 313.051(b) *(i.e.*, 10 jobs*)* was applied, for the size and scope of the project described in the Application and in **EXHIBIT 3**, the required number of jobs would exceed the industry standard for the number of employees reasonably necessary for the operation of the facility; and,

WHEREAS, on December 15, 2009, the Board of Trustees determined that the Tax Limitation Amount requested by Applicant, and as defined in Sections 1.2 and 1.3, below, is consistent with the minimum values set out by Tax Code, §§ 313.022(b) and 313.052, as such Tax Limitation Amount was computed for the effective date of this Agreement; and,

WHEREAS, on December 15, 2009, pursuant to the provisions of Texas Tax Code § 313.025(f-1), the Board of Trustees waived the job creation requirement set forth in Texas Tax Code § 313.051(b); and,

WHEREAS, on December 15, 2009, the Board of Trustees approved the form of this Agreement for a Limitation on Appraised Value of Property for School District Maintenance and Operations Taxes, and authorized the Board President and Secretary to execute and deliver such Agreement to the Applicant;

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants and agreements herein contained, the Parties agree as follows:

ARTICLE I

AUTHORITY, TERM, DEFINITIONS, AND GENERAL PROVISIONS

Section 1.1. AUTHORITY

This Agreement is executed by the District as its written agreement with the Applicant pursuant to the provisions and authority granted to the District in Texas Tax Code § 313.027.

Section 1.2. TERM OF THE AGREEMENT

This Agreement shall commence and first become effective for the ad valorem property valuations of the Qualified Property and Qualified Investments made pursuant to this Agreement beginning with the tax appraisals to be made as of January 1, 2010, which date is referred to herein as the "Commencement Date." The Parties acknowledge that the limitation on the local ad valorem property values shall not commence until the valuations are made as of January 1, 2012, the second anniversary of the Commencement Date. These first two Tax Years that begin on the Commencement Date (*i.e.*, the 2010 and 2011 Tax Years), which together with the period from the date of approval until January 1, 2010 are collectively referred to herein as the "Qualifying Time Period," as that term is defined in Texas Tax Code § 313.021(4). Unless sooner terminated as provided herein, the limitation on the local ad valorem property values shall terminate on December 31, 2019. Except as otherwise provided herein, this Agreement will terminate, in full, on December 31, 2022. The termination of this Agreement shall not (i) release any obligations, liabilities, rights and remedies arising out of any breach of, or failure to comply with, this Agreement occurring prior to such termination, or (ii) affect the right of a Party to enforce the payment of any amount to which such Party was entitled before such termination or to which such Party became entitled as a result of an event that occurred before such termination, so long as the right to such payment survives said termination.

Except as otherwise provided herein, the Tax Years for which this Agreement is effective are as set forth below and set forth opposite each such Tax Year are the corresponding year in the term of this Agreement, the date of the Appraised Value determination for such Tax Year, and a summary description of certain provisions of this Agreement corresponding to such Tax Year (it being understood and agreed that such summary descriptions are for reference purposes only, and shall not affect in any way the meaning or interpretation of this Agreement):

Year of Agreement	Date of Appraisal	School Year	Tax Year	Summary Description of Provisions
1	January 1, 2010	2010-11	2010	No limitation on value. Tax credit in future years.
2	January 1, 2011	2011-12	2011	No limitation on value. Tax credit in future years.
3	January 1, 2012	2012-13	2012	$ 10 million property value limitation.
4	January 1, 2013	2013-14	2013	$ 10 million property value limitation. Possible tax credit due to Applicant.

Year of Agreement	Date of Appraisal	School Year	Tax Year	Summary Description of Provisions
5	January 1, 2014	2014-15	2014	$ 10 million property value limitation. Possible tax credit due to Applicant.
6	January 1, 2015	2015-16	2015	$ 10 million property value limitation. Possible tax credit due to Applicant.
7	January 1, 2016	2016-17	2016	$ 10 million property value limitation. Possible tax credit due to Applicant.
8	January 1, 2017	2017-18	2017	$ 10 million property value limitation. Possible tax credit due to Applicant.
9	January 1, 2018	2018-19	2018	$ 10 million property value limitation. Possible tax credit due to Applicant.
10	January 1, 2019	2019-20	2019	$ 10 million property value limitation. Possible tax credit due to Applicant.
11	January 1, 2020	2020-21	2020	No tax limitation. Possible tax credit due to Applicant. Applicant obligated to Maintain Viable Presence if no early termination.
12	January 1, 2021	2021-22	2021	No tax limitation. Possible tax credit due to Applicant. Applicant obligated to Maintain Viable Presence if no early termination.
13	January 1, 2022	2022-23	2022	No tax limitation. Possible tax credit due to Applicant. Applicant obligated to Maintain Viable Presence if no early

Year of Agreement	Date of Appraisal	School Year	Tax Year	Summary Description of Provisions
				termination.

Section 1.3. DEFINITIONS

Wherever used herein, the following terms shall have the following meanings, unless the context in which used clearly indicates another meaning, to-wit:

"*Act*" means the Texas Economic Development Act set forth in Chapter 313 of the Texas Tax Code, as amended.

"*Affiliate*" means any entity that directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the Applicant. For purposes of this definition, control of an entity means (i) the ownership, directly or indirectly, of fifty percent (50%) or more of the voting rights in a company or other legal entity or (ii) the right to direct the management or operation of such entity whether by ownership (directly or indirectly) of securities, by contract or otherwise.

"*Affiliated Group*" means a group of one or more entities in which a controlling interest is owned by a common owner or owners, either corporate or non-corporate, or by one or more of the member entities.

"*Agreement*" means this Agreement, as the same may be modified, amended, restated, amended and restated, or supplemented from time to time in accordance with Section 8.3.

"*Applicant*" means EC&R Development LLC, *(Texas Taxpayer ID # 32039451532),* the company listed in the Preamble of this Agreement who, on July 15, 2009, filed the Application with the District for an Appraised Value Limitation on Qualified Property, pursuant to Chapter 313 of the Texas Tax Code. The term "Applicant" shall also include the Applicant's assigns and successors-in-interest.

"*Appraised Value*" shall have the meaning assigned to such term in Section 1.04(8) of the Texas Tax Code.

"*Applicable School Finance Law*" means Chapters 41 and 42 of the Texas Education Code, the Texas Economic Development Act (Chapter 313 of the Texas Tax Code), Chapter 403, Subchapter M, of the Texas Government Code applicable to the District, and the Constitution and general laws of the State applicable to the independent school districts of the State, including specifically, the applicable rules and regulations of the agencies of the State having jurisdiction over any matters relating to the public school systems and school districts of the State, and judicial decisions construing or interpreting any of the above. The term also includes any

amendments or successor statutes that may be adopted in the future that could impact or alter the calculation of the Applicant's ad valorem tax obligation to the District, either with or without the limitation of property values made pursuant to this Agreement.

"*Application*" means the Application for Appraised Value Limitation on Qualified Property (Chapter 313, Subchapter B or C, of the Texas Tax Code) initially filed with the District by the Applicant on July 15, 2009.

"*Appraisal District*" means the Willacy County Appraisal District.

"*Comptroller*" means the Texas Comptroller of Public Accounts.

"*Comptroller's Rules*" means the applicable rules and regulations of the Comptroller set forth at Title 34 Texas Administrative Code, together with any court or administrative decisions interpreting same.

"*County*" means Willacy County, Texas.

"*District*" or "*School District*" means the San Perlita Independent School District, being a duly authorized and operating independent school district in the State, having the power to levy, assess, and collect ad valorem taxes within its boundaries and to which Subchapter C of the Act applies. The term also includes any successor independent school district or other successor governmental authority having the power to levy and collect ad valorem taxes for school purposes on the Applicant's Qualified Property or the Applicant's Qualified Investment.

"*Force Majeure*" means a failure caused by (a) provisions of law, or the operation or effect of rules, regulations or orders promulgated by any governmental authority having jurisdiction over the Applicant, the Applicant's Qualified Property or the Applicant's Qualified Investment or any upstream, intermediate or downstream equipment or support facilities as are necessary to the operation of the Applicant's Qualified Property or the Applicant's Qualified Investment; (b) any demand or requisition, arrest, order, request, directive, restraint or requirement of any government or governmental agency whether federal, state, military, local or otherwise; (c) the action, judgment or decree of any court; (d) floods, storms, hurricanes, evacuation due to threats of hurricanes, lightning, earthquakes, washouts, high water, fires, acts of God or public enemies, wars (declared or undeclared), blockades, epidemics, riots or civil disturbances, insurrections, strikes, labor disputes (it being understood that nothing contained in this Agreement shall require the Applicant to settle any such strike or labor dispute), explosions, breakdown or failure of plant, machinery, equipment, lines of pipe or electric power lines (or unplanned or forced outages or shutdowns of the foregoing for inspections, repairs or maintenance), inability to obtain, renew or extend franchises, licenses or permits, loss, interruption, curtailment or failure to obtain electricity, gas, steam, water, wastewater disposal, waste disposal or other utilities or utility services, inability to obtain or failure of suppliers to deliver equipment, parts or material, or inability of the Applicant to ship or failure of carriers to

transport electricity from the Applicant's facilities; or (e) any other cause (except financial), whether similar or dissimilar, over which the Applicant has no reasonable control and which forbids or prevents performance.

"*Land*" shall have the meaning assigned to such term in Section 2.2.

"*Maintain Viable Presence*" means the operation over the term of this Agreement of the facility or facilities for which the tax limitation is granted, as the same may from time to time be expanded, upgraded, improved, modified, changed, remodeled, repaired, restored, reconstructed, reconfigured, and/or reengineered and (ii) the retention over the term of this Agreement of not fewer than six (6) Qualifying Jobs to be located and performed within Applicant's entire Wind Energy Project that includes, but is not limited to, Applicant's Qualified Property, as set forth in the Application, with the minimum salaries required by Texas Tax Code § 313.021(3)(E).

"*Maintenance and Operations Revenue*" or "*M&O Revenue*" means (i) those revenues which the District receives from the levy of its annual ad valorem maintenance and operations tax pursuant to Texas Education Code § 45.002 and Article VII § 3 of the Texas Constitution, plus (ii) all State revenues to which the District is or may be entitled under Chapter 42 of the Texas Education Code or any other statutory provision as well as any amendment or successor statute to these provisions, plus (iii) any indemnity payments received by the District under other agreements similar to this Agreement to the extent that such payments are designed to replace District M&O Revenue lost as a result of such similar agreements, less (iv) any amounts necessary to reimburse the State of Texas or another school district for the education of additional students pursuant to Chapter 41 of the Texas Education Code.

"*Market Value*" shall have the meaning assigned to such term in Section 1.04(7) of the Texas Tax Code.

"*Qualified Investment*" has the meaning set forth in Chapter 313 of the Texas Tax Code, as interpreted by the Comptroller's Rules, as these provisions existed on the date of this Agreement, applying any specific requirements for rural school districts imposed by Subchapter C of Chapter 313 of the Texas Tax Code and by the Comptroller's Rules.

"*Qualified Property*" has the meaning set forth in Chapter 313 of the Texas Tax Code, as interpreted by the Comptroller's Rules and the Texas Attorney General, as these provisions existed on the date of this Agreement, applying any specific requirements for rural school districts imposed by Subchapter C of Chapter 313 of the Texas Tax Code and by the Comptroller's Rules.

"*Qualifying Time Period*" means the period that begins on the date the Application was approved by the District and ends on December 31 of the second Tax Year that begins after such date of approval, as is defined in Texas Tax Code § 313.021(4)(A).

"Revenue Protection Amount" means the amount calculated pursuant to Section 3.2 of this Agreement.

"State" means the State of Texas.

"Tax Credit" means the tax credit, either to be paid by the District to Applicant, or to be applied against any taxes that the school district imposes in Qualified Property, as computed under the provisions of Subchapter D of the Act, and rules adopted by the Comptroller and/or the Texas Education Agency, provided that Applicant complies with the requirements under such provisions, including the timely filing of a completed application under Texas Tax Code § 313.103 and the duly adopted administrative rules.

"Tax Limitation Amount" means the maximum amount which may be placed as the Appraised Value on Qualified Property/Qualified Investment for years three (3) through ten (10) of this Agreement pursuant to Texas Tax Code § 313.054. That is, for each of the eight (8) Tax Years 2012, 2013, 2014, 2015, 2016, 2017, 2018 and 2019, the Appraised Value of the Applicant's Qualified Investment for the District's maintenance and operations ad valorem tax purposes shall not exceed, and the Tax Limitation Amount shall be, the lesser of:

(a) the Market Value of the Applicant's Qualified Investment; or

(b) Ten Million Dollars ($10,000,000.00).

This Tax Limitation Amount is based on the limitation amount for the category that applies to the District on the effective date of this Agreement, as set out by Tax Code, §313.022(b) or §313.052.

"*Tax Year*" shall have the meaning assigned to such term in Section 1.04(13) of the Texas Tax Code (*i.e.*, the calendar year).

"*Taxable Value*" shall have the meaning assigned to such term in Section 1.04(10) of the Texas Tax Code.

"Texas Education Agency Rules" means the applicable rules and regulations adopted by the Texas Commissioner of Education in relation to the administration of Chapter 313, Texas Tax Code, which are set forth at Title 19, Texas Administrative Code, together with any court or administrative decisions interpreting same.

"*Wind Energy Project*" means a renewable wind energy electric generation project as defined by Tex. Tax Code § 313.024(b)(5) that enters into an agreement for a limitation on appraised value pursuant to the Texas Economic Development Act (Chapter 313 of the Texas Tax Code).

ARTICLE II

PROPERTY DESCRIPTION

Section 2.1. Location Within a Qualified Reinvestment or Enterprise Zone

The Applicant's Qualified Property upon which the Applicant's Qualified Investment will be located is within an area designated as a reinvestment zone under Chapter 311 or 312 of the Texas Tax Code, or as an enterprise zone under Chapter 2303 of the Texas Government Code. The legal description of the reinvestment or enterprise zone in which the Applicant's Qualified Property is located is attached to this Agreement as **EXHIBIT 1** and is incorporated herein by reference for all purposes.

Section 2.2. Location of Qualified Property

The location of the Applicant's Qualified Property upon which the Applicant's Qualified Investment will be located is described in the legal description which is attached to this Agreement as **EXHIBIT 2** and is incorporated herein by reference for all purposes. The Parties expressly agree that the boundaries of the Land may not be materially changed from its configuration described in **EXHIBIT 2** without the express authorization of each of the Parties.

Section 2.3. Description of Qualified Investment

The Qualified Investment and/or Qualified Property that is subject to the Tax Limitation Amount is described in **EXHIBIT 3**, which is attached hereto and incorporated herein by reference for all purposes ("Applicant's Qualified Investment"). Property which is not specifically described in **EXHIBIT 3** shall not be considered by the District or the Appraisal District to be part of the Applicant's Qualified Investment for purposes of this Agreement, unless pursuant to Texas Tax Code § 313.027(e) and Section 8.3 of this Agreement, the Board of Trustees, by official action, provides that such other property is a part of the Applicant's Qualified Investment for purposes of this Agreement.

Section 2.4. Qualifying Use

The Applicant's Qualified Investment described above in Section 2.3 qualifies for a tax limitation agreement under Texas Tax Code § 313.024(b)(5) as a renewable energy generation facility.

Section 2.5. APPRAISED VALUE LIMITATION

So long as Applicant makes a Qualified Investment in the amount Ten Million Dollars ($10,000,000.00), or greater, during the Qualifying Time Period; and unless this Agreement has been terminated as provided herein before such Tax Year, for each of the eight (8) Tax Years 2012, 2013, 2014, 2015, 2016, 2017, 2018 and 2019, the Appraised Value of the Applicant's Qualified Investment for the District's maintenance and operations ad valorem tax purposes shall not exceed the lesser of:

(a) the Market Value of the Applicant's Qualified Investment; or

(b) Ten Million Dollars ($10,000,000.00).

This Tax Limitation Amount is based on the limitation amount for the category that applies to the District on the effective date of this Agreement, as set out by Tax Code, §313.022(b) or §313.052.

ARTICLE III

PROTECTION AGAINST LOSS OF FUTURE DISTRICT REVENUES

Section 3.1. INTENT OF THE PARTIES

Subject to the limitations contained in this Agreement (including Section 5.1), it is the intent of the Parties that the District shall, in addition to the receipt of payments as set forth below in Article IV of this Agreement, be compensated by the Applicant for any loss that the District incurs in its Maintenance and Operations Revenue as a result of entering into this Agreement, after taking into account any payments to be made under this Agreement, other than payments as set forth in Article IV. Subject to the limitations contained in this Agreement (including Section 5.1), it is the intent of the Parties that the risk of any negative financial consequence to the District in making the decision to enter into this Agreement will be borne by the Applicant and not by the District.

Section 3.2. CALCULATING THE AMOUNT OF LOSS OF REVENUES BY THE DISTRICT

Subject to the provisions of Sections 5.1 and 5.2, the amount to be paid by the Applicant to compensate the District for loss of Maintenance and Operations Revenue resulting from this Agreement for each year during the term of this Agreement shall be determined in compliance with the Applicable School Finance Law in effect for such year and according to the following formula:

The M&O amount owed by the Applicant to District means the Original M&O Revenue *minus* the New M&O Revenue;

Where:

i. Original M&O Revenue means the total State and local Maintenance & Operations Revenue that the District would have received for the school year under the Applicable School Finance Law had this Agreement not been entered into by the Parties and the Qualified Property and/or Qualified Investment been subject to the ad valorem maintenance & operations tax.

ii. New M&O Revenue means the total State and local Maintenance & Operations Revenue that the District actually received for such school year.

In making the calculations required by this Section 3.2:

i. The Taxable Value of property for each school year will be determined under the Applicable School Finance Law.

ii. For purposes of this calculation, the tax collection rate on the Applicant's Qualified Property and/or the Applicant's Qualified Investment will be presumed to be one hundred percent (100%)

iii. If, for any year of this Agreement, the difference between the Original M&O Revenue and the New M&O Revenue as calculated under this Section 3.2 results in a negative number, the negative number will be considered to be zero.

iv. All calculations made for years three (3) through ten (10) of this Agreement under Section 3.2, Subsection *ii* of this Agreement will reflect the Tax Limitation Amount for such year.

v. All calculations made under this Section 3.2 shall be made by a methodology which isolates only the revenue impact caused by this Agreement. Applicant shall not be responsible to reimburse the District for other revenue losses created by other agreements or any other factors.

Section 3.3. COMPENSATION FOR LOSS OF OTHER REVENUES

In addition to the amounts determined pursuant to Section 3.2 above, and to the extent provided in Section 6.3, the Applicant, on an annual basis, shall also indemnify and reimburse the District for the following:

a. all non-reimbursed costs incurred by the District in paying or otherwise crediting to the account of Applicant, any applicable tax credit to which Applicant may be entitled pursuant to Chapter 313, Subchapter D of the Texas Tax Code, and for which the District does not receive reimbursement from the State pursuant to Texas Education Code § 42.2515, or other similar or successor statute.

b. all non-reimbursed costs, certified by the District's external auditor to have been incurred by the District for extraordinary education-related expenses related to the project that are not directly funded in state aid formulas, including expenses for the purchase of portable classrooms and the hiring of additional personnel to accommodate a temporary increase in student enrollment attributable to the project.

c. any other loss of District revenues which are or may be attributable to the payment by Applicant to or on behalf any other third party beneficiary.

Section 3.4. CALCULATIONS TO BE MADE BY THIRD PARTY

All calculations under this Agreement shall be made annually by an independent third party (the "Third Party") jointly approved each year by the District and the Applicant. If the Parties cannot agree on the Third Party, then the Third Party shall be selected by the mediator provided in Section 7.8 of this Agreement.

Section 3.5. DATA USED FOR CALCULATIONS

The calculations for payments under this Agreement shall be initially based upon the valuations placed upon the Applicant's Qualified Investment and/or the Applicant's Qualified Property by the Willacy County Appraisal District in its annual certified tax roll submitted to the District pursuant to Texas Tax Code § 26.01 on or about July 25 of each year of this Agreement. Immediately upon receipt of the valuation information by the District, the District shall submit the valuation information to the Third Party selected under Section 3.4. The certified tax roll data shall form the basis of the calculation of any and all amounts due under this Agreement. All other data utilized by the Third Party to make the calculations contemplated by this Agreement shall be based upon the best available current estimates. The data utilized by the Third Party shall be adjusted from time to time by the Third Party to reflect actual amounts, subsequent adjustments by the Willacy County Appraisal District to the District's certified tax roll or any other changes in student counts, tax collections, or other data.

Section 3.6. DELIVERY OF CALCULATIONS

On or before November 1 of each year for which this Agreement is effective, the Third Party appointed pursuant to Section 3.4 of this Agreement shall forward to the Parties a certification containing the calculations required under Sections 3.2 and/or 3.3 of this Agreement in sufficient detail to allow the Parties to understand the manner in which the calculations were

made. The Third Party shall simultaneously submit his, her or its invoice for fees for services rendered to the Parties, if any fees are being claimed. Upon reasonable prior notice, the employees and agents of the Applicant shall have access, at all reasonable times, to the Third Party's offices, personnel, books, records, and correspondence pertaining to the calculation and fee for the purpose of verification. The Third Party shall maintain supporting data consistent with generally accepted accounting practices, and the employees and agents of the Applicant shall have the right to reproduce and retain for purpose of audit, any of these documents. The Third Party shall preserve all documents pertaining to the calculation and fee for a period of three (3) years after payment. The Applicant shall not be liable for any of Third Party's costs resulting from an audit of the Third Party's books, records, correspondence, or work papers pertaining to the calculations contemplated by this Agreement or the fee paid by the Applicant to the Third Party pursuant to Section 3.7, if such fee is timely paid.

Section 3.7. PAYMENT BY APPLICANT

The Applicant shall pay any amount determined to be due and owing to the District under this Agreement on or before the January 31 next following the tax levy for each year for which this Agreement is effective. By such date, the Applicant shall also pay any amount billed by the Third Party plus any legal expenses paid by the District to its attorneys, auditors, or financial consultants for the preparation and filing of any financial reports, disclosures, or reimbursement applications filed with or sent to the State of Texas which are, or may be required under the terms of or because of the execution of this Agreement. In no year shall the Applicant be responsible for the payment of a fee to the Third Party in excess of Ten Thousand Dollars ($10,000.00).

Section 3.8. RESOLUTION OF DISPUTES

Pursuant to Section 3.4 and Section 3.6, should the Applicant disagree with the certification containing the calculations, the Applicant may appeal the findings, in writing, to the Third Party within fifteen (15) days of receipt of the certification. Within fifteen (15) days of receipt of the Applicant's appeal, the Third Party will issue, in writing, a final determination of the certification containing the calculations. Any appeal by the Applicant of the final determination of the Third Party may be made, in writing, to the San Perlita Independent School District Board of Trustees within fifteen (15) days of the final determination.

Section 3.9. EFFECT OF PROPERTY VALUE APPEAL OR OTHER ADJUSTMENT

In the event that the Taxable Value of the Applicant's Qualified Investment and/or the Applicant's Qualified Property is changed after a final appeal of the valuation or is otherwise changed, once the determination of a new value becomes final, the calculations required by Sections 3.2 and 3.3 of this Agreement will be recomputed by the Third Party using the new valuations. Upon completion of the new calculations, the Third Party shall transmit the new calculations to the Parties. The Party owing funds to the other signatories to this Agreement shall

pay any amounts owed within thirty (30) days of receipt of the new calculations from the Third Party.

Section 3.10. Effect of Statutory Changes

Notwithstanding any other provision in this Agreement, but subject to the limitations contained in Section 5.1, in the event that, by virtue of statutory changes to the Applicable School Finance Law, administrative interpretations by the Comptroller, Commissioner of Education, or the Texas Education Agency, or for any other reason attributable to statutory change, the District will receive less Maintenance and Operations Revenue, or, if applicable, will be required to increase its payment of funds to the State, because of its participation in this Agreement, Applicant shall make payments to the District, up to the revenue protection amount limit set forth in Section 5.1, that are necessary to offset any negative impact on the District as a result of its participation in this Agreement. Such calculation shall take into account any adjustments to the amount calculated for the current fiscal year that should be made in order to reflect the actual impact on the District.

ARTICLE IV

PAYMENTS IN LIEU OF TAXATION

Section 4.1. Amounts Exclusive of Indemnity Amounts

In addition to undertaking the responsibility for the payment of all of the amounts set forth under Article III, and as consideration for the execution of this Agreement by the District, the Applicant shall also be responsible for the payments in lieu of taxation set forth in Section 4.2 or 4.3 of this Article IV. It is the express intent of the Parties that the obligation for payments in lieu of taxation under this Article IV are separate and independent of the obligation of the Applicant to pay the amounts described in Article III; provided, however, that payments under Article III and IV are, in all respects, subject to the limitations contained in Section 5.1.

Section 4.2. Calculation of Amount of Payments in Lieu of Taxation

(a) For each of years three (Tax Year 2011) through thirteen (Tax Year 2021) of this Agreement, the District shall be entitled to receive as payments in lieu of taxation an amount equal to forty percent (40%) of the net tax benefit received by the Applicant as a result of this Agreement.

(b) For purposes of Section 4.2(a), the net tax benefit shall be calculated for each of years three (Tax Year 2011) through thirteen (Tax Year 2021) of this Agreement by determining for such Tax Year (i) the amount of maintenance and operations ad valorem taxes which the Applicant would have paid to the District for such Tax Year if this Agreement had not been entered into by the Parties, (ii) adding to the

amount determined under clause (i) any Tax Credit received by the Applicant for such Tax Year, and (iii) subtracting from the sum of the amounts determined under clauses (i) and (ii) the sum of (A) all maintenance and operations ad valorem school taxes actually due to the District or any other governmental entity, including the State of Texas, for such Tax Year, plus (B) any payments due to the District under Article III for such Tax Year. The remainder (which shall not be less than zero) shall be the net tax benefit, to be divided as provided in Section 4.2(a).

(c) The net tax benefit shall be calculated by the Third Party selected pursuant to Section 3.4.

(d) The net tax benefit calculations shall be made at the same time and on the same schedule as the calculations made pursuant to Section 3.6.

(e) Payment of amounts due under this Section 4.2 shall be made at the time set forth in Section 3.7.

Section 4.3. RECALCULATION OF PAYMENTS IN LIEU OF TAXATION

The Parties agree that the payment in lieu of taxation amount set forth in Section 4.2 will initially be calculated based upon the then most current estimate of tax savings to the Applicant, which will be made based upon assumptions of student counts, tax collections, and other applicable data. For each of years three (Tax Year 2011) through thirteen (Tax Year 2021) of this Agreement, the Parties shall adjust the payment in lieu of taxation based upon the following formula:

Taxable Value of the Applicant's Qualified Property for such Tax Year had this Agreement not been entered into by the Parties (i.e., the Taxable Value of the Applicant's Qualified Property used for the District's interest and sinking fund tax purposes for such Tax Year, or school taxes due to any other governmental entity, including the State of Texas, for such Tax Year);

Minus,

The Taxable Value of the Applicant's Qualified Property for such Tax Year after giving effect to this Agreement (i.e., the Taxable Value of the Applicant's Qualified Property used for the District's maintenance and operations tax purposes for such Tax Year, or school taxes due to any other governmental entity, including the State of Texas, for such Tax Year);

Multiplied by,

The District's maintenance and operations tax rate for such Tax Year, or the school tax rate of any other governmental entity, including the State of Texas, for such Tax Year;

Plus,

Any Tax Credit received by the Applicant with respect to such Tax Year;

Minus,

Any amounts previously paid to the District under Article III;

Multiplied by,

The number 0.40;

Minus,

Any amounts previously paid to the District under Sections 4.2 and 4.3 with respect to such Tax Year.

Upon completion of the new calculations, the Third Party shall transmit same to the Parties. Within thirty (30) days of receipt of the new calculations from the Third Party, the Party owing funds to the other Party shall pay any amounts owed.

Section 4.4. ANNUAL LIMITATION ON PAYMENTS IN LIEU OF TAXATION TO THE DISTRICT

a. Beginning with year one (Tax Year 2010) of this Agreement and continuing thereafter through year thirteen (Tax Year 2022) of this Agreement, the District shall not be entitled to receive as payments in lieu of taxation, computed under Sections 4.2 and 4.3 above, an annual amount which exceeds an amount equal to $100 per student per year in averaged daily attendance as defined by Section 42.005 of the Texas Education Code("Annual Limit") except as set forth in Subsections b and c, below.

b. The payments in lieu or taxation payable to the District during each year of the two year Qualifying Time Period (Tax Years 2010 and 2011) shall be Zero Dollars ($ 0.00). The payments in lieu or taxation for years one and two, subject to the Annual Limit, shall be accrued and carried forward until the third tax year of this

Agreement (Tax Year 2012.), resulting in a payment in lieu of taxation in Tax Year 2012 of the payments in lieu of taxation accrued in years one and two plus year three, subject to each year's Annual Limit.

c. Beginning in year four (Tax Year 2013), and for each year thereafter through year thirteen (Tax Year 2022) the Annual Limit amount shall be combined with any accrued but unpaid limit amounts under this Section 4.4 from previous years.

d. Payments under this Section 4.4 shall be due and payable in accordance with the amounts and upon the dates set forth on the following schedule:

Tax Year	Payment Due Date	Amount
2012	January 31, 2013	$0.00
2013	January 31, 2014	
2014	January 31, 2015	
2015	January 31, 2016	
2016	January 31, 2017	
2017	January 31, 2018	
2018	January 31, 2019	
2019	January 31, 2020	
2020	January 31, 2021	
2021	January 31, 2022	
2022	January 31, 2023	

Section 4.5. DUE DATE OF PAYMENTS

All amounts owed by the Applicant to the District for a Tax Year under this Article IV shall be paid on the same date established by Section 3.7 for such Tax Year.

ARTICLE V

ANNUAL LIMITATION OF PAYMENTS BY APPLICANT

SECTION 5.1. ANNUAL LIMITATION AFTER FIRST THREE YEARS

Notwithstanding anything contained in this Agreement to the contrary, and with respect to each Tax Year during the term of this Agreement after the 2013 Tax Year, in no event shall (i) the sum of the maintenance and operations ad valorem taxes paid by the Applicant to the District for such Tax Year, plus the sum of all payments otherwise due from the Applicant to the District under Article III and IV, but subject to the limit set forth in Section 4.4, with respect to such Tax Year exceed (ii) the amount of the maintenance and operations ad valorem taxes that the Applicant would have paid to the District for such Tax Year (determined by using the District's actual maintenance and operations tax rate for such Tax Year) if the Parties had not entered into this Agreement. The calculation and comparison of the amounts described in clauses (i) and (ii) of the preceding sentence shall be included in all calculations made pursuant to Section 3.4, and in the event the sum of the amounts described in said clause (i) exceeds the amount described in said clause (ii), then the payments otherwise due from the Applicant to the District under Article III and IV shall be reduced until such excess is eliminated.

Section 5.2. OPTION TO CANCEL AGREEMENT

In the event that any payment otherwise due from the Applicant to the District under Article III and/or IV, but subject to the limit set forth in Section 4.4, with respect to a Tax Year is subject to reduction in accordance with the provisions of Section 5.1 above, then the Applicant shall have the option to terminate this Agreement. The Applicant may exercise such option to cancel this Agreement by notifying the District of its election in writing not later than the July 31 of the year next following the Tax Year with respect to which a reduction under Section 5.1 is applicable. Any cancellation of this Agreement under the foregoing provisions of this Section 5.2 shall be effective immediately prior to the second Tax Year next following the Tax Year in which the reduction giving rise to the option occurred. Upon such termination this Agreement shall terminate and be of no further force or effect; provided, however, that the Parties respective rights and obligations under this Agreement with respect to the Tax Year or Tax Years (as the case may be) through and including the Tax Year during which such notification is delivered to the District, shall not be impaired or modified as a result of such termination and shall survive such termination unless and until satisfied and discharged.

ARTICLE VI

TAX CREDITS

Section 6.1. APPLICANT'S ENTITLEMENT TO TAX CREDITS

The Applicant shall be entitled to tax credits from the District under and in accordance with the provisions of Subchapter D of the Act and Comptroller Rules, provided that the Applicant complies with the requirements under such provisions, including the filing of a completed Application under Section 313.103 of the Texas Tax Code and Comptroller Rules.

Section 6.2. DISTRICT'S OBLIGATIONS WITH RESPECT TO TAX CREDITS

The District shall timely comply and shall cause the District's collector of taxes to timely comply with their obligations under Subchapter D of the Act and Comptroller Rules, including, but not limited to, such obligations set forth in Section 313.104 of the Texas Tax Code and either Comptroller and/or Texas Education Agency Rules .

Section 6.3. COMPENSATION FOR LOSS OF TAX CREDIT PROTECTION REVENUES

If after the Applicant has actually received the benefit of a tax credit under Section 6.1, the District does not receive aid from the State pursuant to Texas Education Code § 42.2515 or other similar or successor statute with respect to all or any portion of such tax credit for reasons other than the District's failure to comply with the requirements for obtaining such aid, then the District shall notify the Applicant in writing thereof and the circumstances surrounding the State's failure to provide such aid to the District. The Applicant shall pay to the District the amount of such tax credit for which the District did not receive such aid within thirty (30) calendar days after receipt of such notice, and such payment shall be subject to the same provisions for late payment as are set forth in Sections 7.5 and 7.6. If the District receives aid from the State for all or any portion of a tax credit with respect to which the Applicant has made a payment to the District under this Section 6.3, then the District shall pay to the Applicant the amount of such aid within thirty (30) calendar days after the District's receipt thereof.

ARTICLE VII

ADDITIONAL OBLIGATIONS OF APPLICANT

Section 7.1. DATA REQUESTS

During the term of this Agreement, and upon the written request of one Party (the "Requesting Party"), the other Party shall provide the Requesting Party with all information reasonably necessary for the Requesting Party to determine whether the other Party is in compliance with its obligations under this Agreement. The Applicant shall allow authorized employees of the District and/or the Willacy County Appraisal District to have access to the

Applicant's Qualified Property during the term of this Agreement, in order to inspect the project to determine compliance with the terms hereof or as necessary to properly appraise the Taxable Value of the Applicant's Qualified Property and any other tangible property on the premises. All inspections will be made at a mutually agreeable time after the giving of not less that forty-eight (48) hours prior written notice, and will be conducted in such a manner so as not to unreasonably interfere with either the construction or operation of the Applicant's Qualified Property. All inspections may be accompanied by one or more representatives of the Applicant, and shall be conducted in accordance with the Applicant's safety, security, and operational standards. Notwithstanding the foregoing, nothing contained in this Agreement shall require the Applicant to provide the District or the Willacy County Appraisal District with any technical or business information that is private personnel data, proprietary, a trade secret or confidential in nature or is subject to a confidentiality agreement with any third party.

Section 7.2. REPORTS TO OTHER GOVERNMENTAL AGENCIES

Applicant shall timely make any and all reports that are or may be required under the provisions of law or administrative regulation, including but not limited to the annual report or certifications that may be required to be submitted by the Applicant to the Texas Comptroller of Public Accounts under the provisions of Texas Tax Code § 313.032. Applicant shall forward a copy of all such required reports or certifications to the District contemporaneously with the filing thereof. The obligation to make all such required filings shall be a material obligation under this Agreement.

Section 7.3 SUPPORT FOR DISTRICT TECHNICAL TRAINING PROGRAM

Applicant shall, during the entire course of this Agreement, provide support for the District's technical training program for the education and development of technical skills necessary for individuals seeking employment in the wind energy industry. Such support shall, at a minimum, consist of:

(a) Conferring with the District for the purpose of identifying opportunities for employees of Applicant to participate in technical training programs operated by the District for the benefit of its students, and programs sponsored by the District;

(b) Disseminating technical information, at conferences with Applicant's employees to enhance the relevance of the District's training program;

(c) Providing a reasonable opportunity for groups of students of the District to make Applicant sponsored tours of its facilities at times convenient to Applicant and the District and consistent with Applicant's safety and security policies; and,

(d) Considering qualified graduates of the District's technical training program and/or graduates of programs sponsored by the District for available positions with Applicant.

Section 7.4. APPLICANT'S OBLIGATION TO MAINTAIN VIABLE PRESENCE

By entering into this Agreement, the Applicant warrants that:

(a) it will abide by all of the terms of the Agreement;

(b) it will Maintain Viable Presence in the District through the termination date of this Agreement. Notwithstanding anything contained in this Agreement to the contrary, the Applicant shall not be in breach of, and shall not be subject to any liability for failure to Maintain Viable Presence to the extent such failure is caused by Force Majeure (as hereinafter defined), provided the Applicant makes commercially reasonable efforts to remedy the cause of such Force Majeure; and,

(c) it will meet minimum eligibility requirements under Tax Code, Chapter 313 throughout the value limitation and tax-credit settle-up periods.

Section 7.5. CONSEQUENCES OF EARLY TERMINATION OR OTHER BREACH BY APPLICANT

(a) In the event that the Applicant terminates this Agreement without the consent of the District, except as provided in Section 5.2, or in the event that the Applicant or its successor-in-interest fails to comply in any material respect with the terms of this Agreement or to meet any material obligation under this Agreement, after the notice and cure period provided by Section 7.7, then the District shall be entitled to the recapture of all ad valorem tax revenue lost as a result of this Agreement together with the payment of penalty and interest, as calculated in accordance with Section 7.6, on that recaptured ad valorem tax revenue. For purposes of this recapture calculation, the Applicant shall be entitled to a credit for all payments made to the District pursuant to Article III. Applicant shall also be entitled to a credit for any amounts paid to the District pursuant to Article IV.

(b) Notwithstanding Section 7.5(a), in the event that the District determines that the Applicant has failed to Maintain Viable Presence and provides written notice of termination of the Agreement, then the Applicant shall pay to the District liquidated damages for such failure within thirty (30) days after receipt of such termination notice. The sum of liquidated damages due and payable shall be the sum total of the District ad valorem taxes for all of the Tax Years for which a Tax Limitation was granted pursuant to this Agreement prior to the year in which the default occurs that otherwise would have been due and payable by the Applicant to the District without the benefit of this Agreement, including penalty and interest, as calculated in accordance with Section 7.6. For purposes of this liquidated damages calculation, the Applicant shall be entitled to a credit for all payments made to the District pursuant to Article III. The Applicant shall also be entitled to a credit for any amounts paid to the District pursuant to Article IV. Upon payment

of such liquidated damages, Applicant's obligations under this Agreement shall be deemed fully satisfied, and such payment shall constitute the District's sole remedy.

Section 7.6. CALCULATION OF PENALTY AND INTEREST

In determining the amount of penalty or interest, or both, due in the event of a breach of this Agreement, the District shall first determine the base amount of recaptured taxes owed less all credits under Section 7.5 for each Tax Year during the term of this Agreement since the Commencement Date. The District shall calculate penalty or interest for each Tax Year during the term of this Agreement since the Commencement Date in accordance with the methodology set forth in Chapter 33 of the Texas Tax Code, as if the base amount calculated for such Tax Year less all credits under Section 7.5 had become due and payable on February 1 of the calendar year following such Tax Year. Penalties on said amounts shall be calculated in accordance with the methodology set forth in Texas Tax Code § 33.01(a), or its successor statute. Interest on said amounts shall be calculated in accordance with the methodology set forth in Texas Tax Code § 33.01(c), or its successor statute.

Section 7.7. DETERMINATION OF BREACH

(a) Prior to making a determination that the Applicant has failed to Maintain Viable Presence in the District as required by Section 7.4 of this Agreement, or has otherwise committed a material breach of this Agreement, the District shall provide the Applicant with a written notice of the facts which it believes have caused the material breach of this Agreement, and if cure is possible, the cure proposed by the District. In the case of a notice of payment default, Applicant shall have thirty (30) days in which to tender payment, unless it notifies the District within fifteen (15) days after receipt of such notice that it disputes the District's determination of payment default, in which case the dispute shall be settled in the manner set out in Section 7.7(c). For a material breach other than payment default, after receipt of the notice, Applicant shall be given sixty (60) days to present any facts or arguments to the Board of Trustees showing that it is not in material breach of its obligations under the Agreement, or that it has cured or undertaken to cure any such material breach.

(b) If the Board of Trustees is not satisfied with such response and/or that such breach has been cured, then the Board of Trustees shall, after reasonable notice to the Applicant, conduct a hearing called and held for the purpose of determining whether such breach has occurred and, if so, whether such breach has been cured. At any such hearing, the Applicant shall have the opportunity, together with their counsel, to be heard before the Board of Trustees. At the hearing, the Board of Trustees shall make findings as to whether or not a material breach of this Agreement has occurred, the date such breach occurred, if any, and whether or not any such breach has been cured. In the event that the Board of Trustees determines that such a breach has occurred and has not been cured, it shall also determine the amounts of recaptured taxes under Section 7.5 (net of all credits under Section 7.5), and the amount of any penalty and/or interest under Section 7.6 that are owed to the District.

(c) After making its determination regarding any alleged breach, the Board of Trustees shall cause the Applicant to be notified in writing of its determination.

Section 7.8. DISPUTE RESOLUTION

(a) After receipt of notice of the Board of Trustee's determination of a material breach under Section 7.7, the Applicant shall have thirty (30) days in which either to tender payment or evidence of its efforts to cure, or to initiate mediation of the dispute by written notice to the District, in which case the District and the Applicant shall be required to make a good faith effort to resolve, without resort to litigation and within sixty (60) days after the Applicant's receipt of notice of the Board of Trustee's determination of breach under Section 7.7, such dispute through mediation with a mutually agreeable mediator and at a mutually convenient time and place for the mediation. If the Parties are unable to agree on a mediator, a mediator shall be selected by the senior state district court judge then residing in Willacy County, Texas. The Parties agree to sign a document that provides the mediator and the mediation will be governed by the provisions of Chapter 154 of the Texas Civil Practice and Remedies Code and such other rules as the mediator shall prescribe. With respect to such mediation, (i) the District shall bear one-half of such mediator's fees and expenses and the Applicant shall bear one-half of such mediator's fees and expenses, and (ii) otherwise each Party shall bear all of its costs and expenses (including attorneys' fees) incurred in connection with such mediation.

(b) In the event that any mediation is not successful in resolving the dispute or that payment is not received before the expiration of such sixty (60) days, the District shall have the remedies for the collection of the amounts determined under Section 7.7 as are set forth in Texas Tax Code Chapter 33, Subchapters B and C, for the collection of delinquent taxes. In the event that the District successfully prosecutes legal proceedings under this section, the Applicant shall also be responsible for the payment of attorney's fees and a tax lien on the Applicant's Qualified Property and the Applicant's Qualified Investment pursuant to Texas Tax Code § 33.07 to the attorneys representing the District pursuant to Texas Tax Code § 6.30.

(c) Subject to Section 7.10, in any event where a dispute between the District and the Applicant under this Agreement cannot be resolved by the Parties, either the District or the Applicant may seek a judicial declaration of their respective rights and duties under this Agreement or otherwise, in any judicial proceeding, assert any rights or defenses, or seek any remedy in law or in equity, against the other Party with respect to any claim relating to any breach, default, or nonperformance of any covenant, agreement or undertaking made by a Party pursuant to this Agreement.

Section 7.9. LIMITATION OF OTHER DAMAGES

(a) Notwithstanding anything contained in this Agreement to the contrary, in the event of default or breach of this Agreement by the Applicant, the District's damages for such a default

shall under no circumstances exceed the greater of either any amounts calculated under Sections 7.5 and 7.6 above, or the monetary sum of the difference between the payments and credits due and owing to the Applicant at the time of such default and the District taxes that would have been lawfully payable to the District had this Agreement not been executed. In addition, the District's sole right of equitable relief under this Agreement shall be its right to terminate this Agreement.

(b) The Parties further agree that the limitation of damages and remedies set forth in this Section 7.9 shall be the sole and exclusive remedies available to the District, whether at law or under principles of equity.

Section 7.10. BINDING ON SUCCESSORS

In the event of a merger or consolidation of the District with another school district or other governmental authority, this Agreement shall be binding on the successor school district or other governmental authority.

ARTICLE VIII

MISCELLANEOUS PROVISIONS

Section 8.1. INFORMATION AND NOTICES

Unless otherwise expressly provided in this Agreement, all notices required or permitted hereunder shall be in writing and deemed sufficiently given for all purposes hereof if (i) delivered in person, by courier (e.g., by Federal Express) or by registered or certified United States Mail to the Party to be notified, with receipt obtained, or (ii) sent by facsimile transmission, with "answer back" or other "advice of receipt" obtained, in each case to the appropriate address or number as set forth below. Each notice shall be deemed effective on receipt by the addressee as aforesaid; provided that, notice received by facsimile transmission after 5:00 p.m. at the location of the addressee of such notice shall be deemed received on the first business day following the date of such electronic receipt.

Notices to the District shall be addressed as follows:

Superintendent Albert A. Peña, IV
SAN PERLITA INDEPENDENT SCHOOL DISTRICT
22987 Trojan Drive
San Perlita, Texas 78590
Fax: 956-248-5561
Email: apena@spisd.org

or at such other address or to such other facsimile transmission number and to the attention of such other person as the District may designate by written notice to the Applicant.

Notices to the Applicant shall be addressed to:
EC&R Development, LLC
Attn: Development Manager (Magic Valley Wind Farm)
812 San Antonio Street, Suite 201
Austin, Texas 78701
Fax: (512) 494-9581
E-mail: patrick.woodson@eon.com or tami.hart@eon.com

or at such other address or to such other facsimile transmission number and to the attention of such other person as the Applicant may designate by written notice to the District.

Section 8.2. EFFECTIVE DATE, TERMINATION OF AGREEMENT

(a) This Agreement shall be and become effective on January 1, 2010, the effective date upon which the tax limitation agreement is first made effective by the District.

(b) The obligation to Maintain Viable Presence under this Agreement shall remain in full force and effect through the termination in full date established in Section 1.2 of this Agreement.

(c) In the event that Applicant fails to make a Qualified Investment in the amount of Ten Million Dollars ($10,000,000.00), or greater, during the Qualifying Time Period, this Agreement shall become null and void on December 31, 2011.

Section 8.3. AMENDMENTS TO AGREEMENT; WAIVERS

This Agreement may not be modified or amended except by an instrument or instruments in writing signed by all of the Parties. Waiver of any term, condition or provision of this Agreement by any Party shall only be effective if in writing and shall not be construed as a waiver of any subsequent breach of, or failure to comply with, the same term, condition or provision, or a waiver of any other term, condition or provision of this Agreement. Pursuant to Comptroller's Rule 9.1055, and subject to Section 2.3, by official action of the Board of Trustees, this Agreement may be amended to include, in the Applicant's Qualified Investment, additional or replacement Qualified Property not specified in **EXHIBIT 3**, provided that the Applicant reports to the District, the Comptroller, and the Appraisal District, in the same format, style, and presentation as the Application, all relevant investment, value, and employment information that is related to the additional property. Any amendment of the Agreement adding additional or replacement Qualified Property pursuant to this Section 8.3 shall, pursuant to Comptroller's Rule 9.1055, (1) require that all property added by amendment be eligible property as defined by Tax Code, §313.024; (2) clearly distinguish the property, investment, and employment information

added by amendment from the property, investment, and employment information in the original Agreement; and (3) define minimum eligibility requirements for the recipient of limited value. This Agreement may not be amended to extend the value limitation time period.

Section 8.4. ASSIGNMENT

This Agreement may not be assigned by Applicant without the approval of the District, except that the Applicant may, without the District's consent, assign its rights and responsibilities under this Agreement to any person who acquires all or any portion of Applicant's interest in the Qualified Property, including a person who proposes to construct, acquire, operate or otherwise place in service, Qualified Property listed in Exhibit 3 which Applicant has not constructed or acquired as of the date of the assignment. Applicant shall give written notice of any such assignment to the District, whereupon the District shall cause any property taxes applicable to the interest in the Qualified Property acquired by the assignee to be assessed separately to such assignee. Any assignment, including without limitation an assignment to an assignee acquiring an interest in the Qualified Property, shall require that all conditions and obligations in this Agreement applying to the interest acquired by the assignee shall be assumed by the assignee, and upon such assumption, Applicant (or any other partial assignee not a part of the assignment in question) shall have no further rights, duties or obligations under the Agreement to the extent such rights, duties or obligations apply to the interest acquired by the assignee. No assignment can be made if (a) there exists a default hereunder, declared by the District, that has not been cured, or (b) the assignee is delinquent in the payment of ad valorem taxes owed to the District or any other taxing jurisdiction in Willacy County, Texas. Approval by the District shall not be unreasonably withheld, conditioned or delayed. The parties hereto agree that a transfer of all or a portion of member interest or other ownership interest in Applicant to a third party shall not be considered an assignment under the terms of this Agreement.

Section 8.5. MERGER

This Agreement contains all of the terms and conditions of the understanding of the Parties relating to the subject matter hereof. All prior negotiations, discussions, correspondence, and preliminary understandings between the Parties and others relating hereto are superseded by this Agreement.

Section 8.6. MAINTENANCE OF COUNTY APPRAISAL DISTRICT RECORDS

When appraising the Applicant's Qualified Property and the Applicant's Qualified Investment subject to a limitation on Appraised Value under this Agreement, the Chief Appraiser of the Willacy County Appraisal District shall determine the Market Value thereof and include both such Market Value and the appropriate value thereof under this Agreement in its appraisal records.

Section 8.7. GOVERNING LAW

This Agreement and the transactions contemplated hereby shall be governed by and interpreted in accordance with the laws of the State of Texas without giving effect to principles thereof relating to conflicts of law or rules that would direct the application of the laws of another jurisdiction. Venue in any legal proceeding shall be in Willacy County, Texas.

Section 8.8. AUTHORITY TO EXECUTE AGREEMENT

Each of the Parties represents and warrants that its undersigned representative has been expressly authorized to execute this Agreement for and on behalf of such Party.

Section 8.9. SEVERABILITY

If any term, provision or condition of this Agreement, or any application thereof, is held invalid, illegal or unenforceable in any respect under any Law (as hereinafter defined), this Agreement shall be reformed to the extent necessary to conform, in each case consistent with the intention of the Parties, to such Law, and to the extent such term, provision or condition cannot be so reformed, then such term, provision or condition (or such invalid, illegal or unenforceable application thereof) shall be deemed deleted from (or prohibited under) this Agreement, as the case may be, and the validity, legality and enforceability of the remaining terms, provisions and conditions contained herein (and any other application such term, provision or condition) shall not in any way be affected or impaired thereby. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties hereto shall negotiate in good faith to modify this Agreement in an acceptable manner so as to effect the original intent of the Parties as closely as possible to the end that the transactions contemplated hereby are fulfilled to the extent possible. As used in this Section 8.9, the term "Law" shall mean any applicable statute, law (including common law), ordinance, regulation, rule, ruling, order, writ, injunction, decree or other official act of or by any federal, state or local government, governmental department, commission, board, bureau, agency, regulatory authority, instrumentality, or judicial or administrative body having jurisdiction over the matter or matters in question.

Section 8.10. PAYMENT OF EXPENSES

Except as otherwise expressly provided in this Agreement, or as covered by the application fee, each of the Parties shall pay its own costs and expenses relating to this Agreement, including, but not limited to, its costs and expenses of the negotiations leading up to this Agreement, and of its performance and compliance with this Agreement.

Section 8.11. INTERPRETATION

When a reference is made in this Agreement to a Section, Article or Exhibit, such reference shall be to a Section or Article of, or Exhibit to, this Agreement unless otherwise

indicated. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. The words "include," "includes" and "including" when used in this Agreement shall be deemed in such case to be followed by the phrase ", but not limited to,". Words used in this Agreement, regardless of the number or gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context shall require. This Agreement is the joint product of the Parties and each provision of this Agreement has been subject to the mutual consultation, negotiation and agreement of each Party and shall not be construed for or against any Party.

Section 8.12. EXECUTION OF COUNTERPARTS

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which, taken together, shall constitute but one and the same instrument, which may be sufficiently evidenced by one counterpart.

Section 8.13. PUBLICATION OF DOCUMENTS

The Parties acknowledge that the District is requires to publish the Application and its required schedules, or any amendment thereto; all economic analyses of the proposed project submitted to the District; the approved and executed copy of this Agreement or any amendment thereto; and each application requesting tax credits under Tex. Tax Code § 313.103, as follows:

a. Within seven days of such document, the school district shall submit a copy to the Comptroller for Publication on the Comptroller's Internet website.

b. District shall provide on its website a link to the location of those documents posted on the Comptroller's website.

c. This Section does not require the Publication of information that is confidential under Tex. Tax Code § 313.028.

(Signature page follows.)

IN WITNESS WHEREOF, this Agreement has been executed by the Parties in multiple originals on this _____th day of _____, 2009.

EC&R DEVELOPMENT, LLC

By: _____

PATRICK WOODSON
Senior Vice President
EC&R Development, LLC

SAN PERLITA INDEPENDENT SCHOOL DISTRICT

By: _____

MELISSA GUADIANA
President
Board of Trustees

ATTEST:

_____

MAGGIE SEPULVEDA
Secretary
Board of Trustees

IN WITNESS WHEREOF, this Agreement has been executed by the Parties in multiple originals on this 15th day of Dec, 2009.

EC&R DEVELOPMENT, LLC

By: _____

PATRICK WOODSON
Senior Vice President
EC&R Development, LLC

SAN PERLITA INDEPENDENT SCHOOL DISTRICT

By: Melissa Guadiana

MELISSA GUADIANA
President
Board of Trustees

ATTEST:

Maggie Sepulveda

MAGGIE SEPULVEDA
Secretary
Board of Trustees

EXHIBIT 1

DESCRIPTION OF QUALIFIED REINVESTMENT ZONE

The *Magic Valley Reinvestment Zone No. 1* was originally created on July 13, 2009 by action of the Willacy County Commissioner's Court. On August 10, 2008, the Willacy County Commissioner's Court by way of an Order Nunc Pro Tunc corrected clerical errors in the original legal description of the *Magic Valley Reinvestment Zone No. 1*. As a result of the action of the Willacy County Commissioner's Court, the *Magic Valley Reinvestment Zone No. 1,* a map of which is attached as the last page of this **EXHIBIT 1,** includes real property within unincorporated Willacy County, Texas, more specifically the following property and tracks:

The real property in Willacy County, being all of the Lots in the Withers Tract Subdivision; all of the Lots in Blocks 83, 82, 81, 80, 79, 78, 77, 76, 75, 74, 73, 72, 71, 70, 69, 68, 63, 62, 61, 60, 59, 58, 57, 56, 55, 54, 53, 52, 51, 50, 49, 48 of the Gulf Coast Irrigation Company's Subdivision; Lots 5, 6, 7, 8 of Block 67 of the Gulf Coast Irrigation Company's Subdivision; Lots 1, 2, 4, 5, 6, 7, 8, 13, 14 of Block 64 of the Gulf Coast Irrigation Company's Subdivision; Lots 1, 2, 7, 8, 9, 10, 16 of Block 47 of the Gulf Coast Irrigation Company's Subdivision; all of Lots in Hardin & Gill Subdivision out of Share #16; all of Lots in Hardin & Gill Subdivision out of Share #61; all of Lots in Hardin & Gill Subdivision out of Share #64; all of the Lots in Blocks 1,2,3,4, of the E. F. Hubmer Subdivision; all of the Lots in Share #64; all of the Lots in Share #36; all of the Lots in the Sombrerito Ranch Subdivision out of Share #64; all of the Lots in Blocks 1, 2, 3, 4 of the E. H. Beise Subdivision; all of the Lots in Blocks 1, 2, 3, 4 of the Raymondville Subdivision; all of the Lots in the Engleman #1 Subdivision; all of the Lots in the Engleman #2 Subdivision; all of the Lots in the Nile Orchard Subdivision; and Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34 of the Wetzel Subdivision.

A Resolution and Order Approving Designation of
Magic Valley Reinvestment Zone No. 1

The Commissioners' Court of Willacy County, Texas, meeting in regular session on July 13, 2009, considered the following resolution:

WHEREAS, Willacy County, Texas considered the creation of the Magic Valley Reinvestment Zone No. 1 (the "Zone");

WHEREAS, the County has determined that the designation of the Zone will contribute to the retention or expansion of primary employment and will attract major investment in the Zone that will benefit the Zone and will contribute to the economic development of the County;

BE IT ORDERED BY THE COMMISSIONERS' COURT OF WILLACY COUNTY, TEXAS AS FOLLOWS:

1. That the County designates the property located in Willacy County, having the boundary description in Exhibit A and shown on the map in Exhibit B, both attached to this Order, as the Magic Valley Reinvestment Zone No. 1 ("the Zone"), under the Willacy County Guidelines and Criteria for Granting Tax Abatements, having determined that the designation will contribute to the retention or expansion of primary employment and will attract major investment in the Zone and will contribute to the economic development of the County, and

2. That the County declare eligible for property tax abatement all property eligible for commercial-industrial development, now or thereafter located in that Zone as authorized by the Willacy County Guidelines and Criteria for Granting Tax Abatements in Reinvestment Zones and Chapter 312 of the Texas Tax Code.

3. That the zone shall be called "Magic Valley Reinvestment Zone No. 1."

PASSED AND APPROVED at this public hearing of the Willacy County Commissioners' Court, at which a quorum was present, on the 13th day of July, 2009.

Date: 7-13-09
Eliberto "Beto" Guerra
Commissioner Precinct 1

Date: 7-13-09
Eddie Chapa
Commissioner Precinct 2

Date: 7-13-09
Fred Serrato
Commissioner Precinct 3

Date: 7-13-09

Aurelio "Keeter" Guerra, Jr.
Presiding Officer of the Commissioners' Court
Commissioner Precinct 4

ATTESTED: Terry Flores Date: 7-13-09, Terry Flores, County Clerk
by Marea L Longoria, Deputy Clerk

Exhibit A

Legal Description of Reinvestment Zone

The real property in Willacy County, being all of the Lots in the Withers Tract Subdivision;

all of the Lots in Blocks 83, 82, 81, 80, 79, 78, 77, 76, 75, 74, 73, 72, 71, 70, 69, 68, 63, 62, 61, 60, 59, 58, 57, 56, 55, 54, 53, 52, 51, 50, 49, 48 of the Gulf Coast Irrigation Company's Subdivision;

Lots 5, 6, 7, 8 of Block 67 of the Gulf Coast Irrigation Company's Subdivision;

Lots 1, 2, 4, 5, 6, 7, 8, 13, 14 of Block 64 of the Gulf Coast Irrigation Company's Subdivision;

Lots 1, 2, 7, 8, 9, 10, 16 of Block 47 of the Gulf Coast Irrigation Company's Subdivision;

all of Lots in Hardin & Gill Subdivision out of Share #16;

all of Lots in Hardin & Gill Subdivision out of Share #61;

all of Lots in Hardin & Gill Subdivision out of Share #64;

all of the Lots in Blocks 1, 2, 3, 4, of the E. F. Hubmer Subdivision;

all of the Lots in Share #64;

all of the Lots in Share #36;

all of the Lots in the Sombrerito Ranch Subdivision out of Share #64;

all of the Lots in Blocks 1, 2, 3, 4 of the E. H. Beise Subdivision;

all of the Lots in Blocks 1, 2, 3, 4 of the Raymondville Subdivision;

all of the Lots in the Engleman #1 Subdivision;

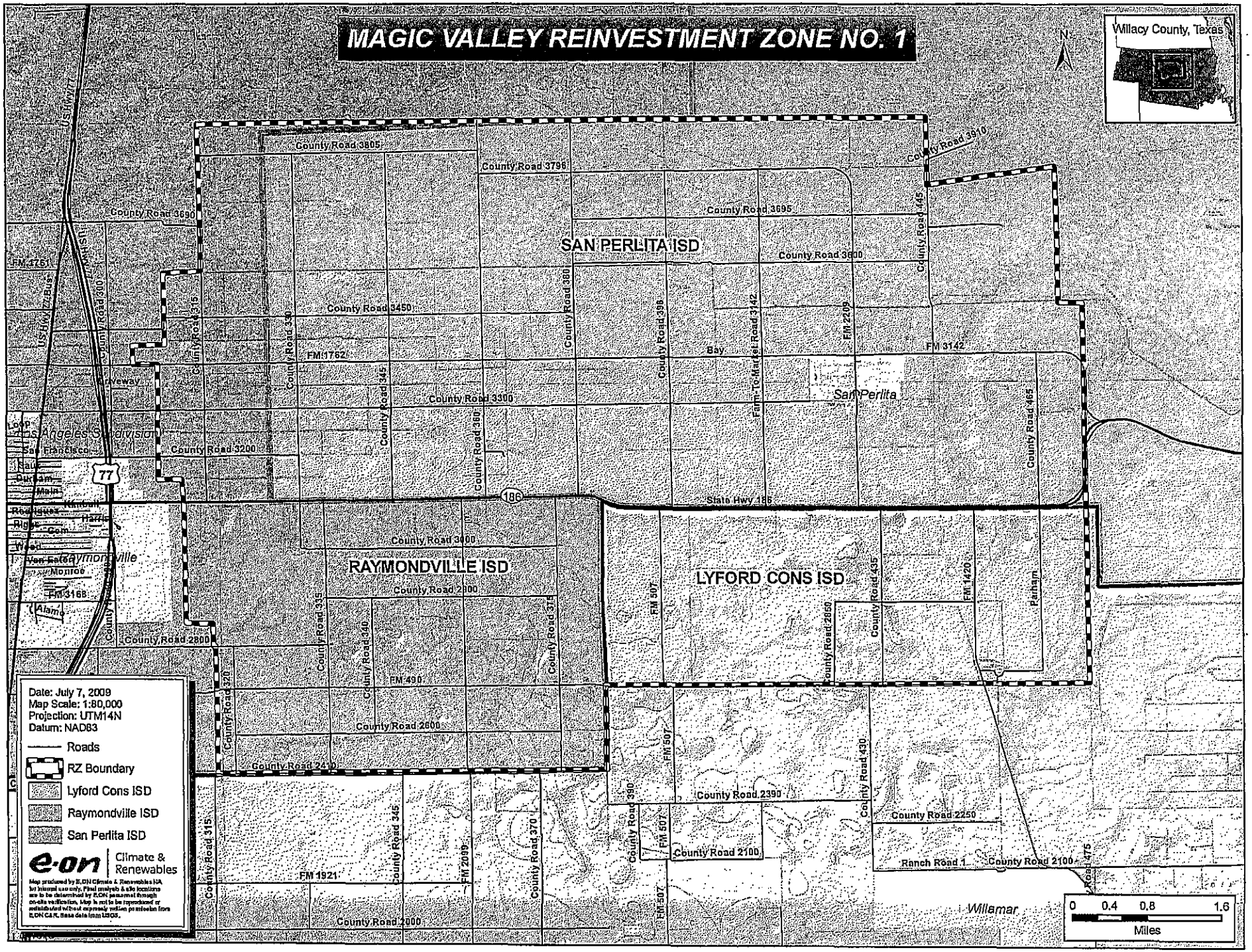
all of the Lots in the Engleman #2 Subdivision;

all of the Lots in the Nile Orchard Subdivision; and

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34 of the Wetzel Subdivision.

Exhibit B

Map of Reinvestment Zone


MAGIC VALLEY REINVESTMENT ZONE NO. 1
Willacy County, Texas
N
SAN PERLITA ISD
RAYMONDVILLE ISD
LYFORD CONS ISD
County Road 3805
County Road 3798
County Road 3695
County Road 3690
County Road 3600
County Road 3510
County Road 3450
County Road 3300
County Road 3200
County Road 3000
County Road 2800
County Road 2600
County Road 2400
County Road 2390
County Road 2250
County Road 2100
County Road 2000
State Hwy 186
FM 1762
FM 3142
FM 2209
FM 3168
FM 490
FM 507
FM 1921
FM 2099
FM 1420
Bay
San Perlita
Raymondville
Los Angeles Subdivision
Willamar
Ranch Road 1
Date: July 7, 2009
Map Scale: 1:80,000
Projection: UTM14N
Datum: NAD83
Roads
RZ Boundary
Lyford Cons ISD
Raymondville ISD
San Perlita ISD
e·on Climate & Renewables
0 0.4 0.8 1.6
Miles

Order re Ratification, Correction,	§	**Commissioners' Court**
Confirmation and Designation of	§	
Magic Valley Reinvestment Zone No. 1	§	**Willacy County, Texas**

Order Nunc Pro Tunc for Ratification, Correction, Confirmation and Designation of Magic Valley Reinvestment Zone No. 1

The Commissioners' Court of Willacy County, Texas, meeting in regular session on the 10th day of August, 2009, considered the following resolution:

WHEREAS, on or about July 13, 2009, after conducting a public hearing on the matter, the Willacy County Commissioners' Court passed and approved an order designating certain property located in Willacy County as a Reinvestment Zone under Chapter 312 of the Texas Tax Code to be called the "Magic Valley Reinvestment Zone No. 1" (the "Reinvestment Zone").

WHEREAS, the public notice, the posted agenda for the July 13, 2009 Commissioners' Court meeting, and the Resolution Designating the Reinvestment Zone contained certain inconsistencies and clerical errors with respect to the real property to be included within the Reinvestment Zone. More specifically, the Resolution Designating the Reinvestment Zone entered by the clerk includes the correct legal description of Reinvestment Zone, which is also attached as Exhibit A to this Resolution. However, the public notice and the agenda for the July 13, 2009 Commissioners' Court meeting contained certain omissions and clerical errors including incorrectly describing "all of the Lots in Share #36" (property that is included in the Reinvestment Zone) as "all of the Lots in Share #34" (property that is not included in the Reinvestment Zone). The correct legal description for the Reinvestment Zone is accurately described in the Resolution Designating the Reinvestment Zone dated July 13, 2009, and is also attached as Exhibit A to this Order.

NOW THEREFORE, after due consideration and examination of the public notice, the posted agenda for the July 13, 2009 Commissioners' Court meeting, and the Resolution Designating the Reinvestment Zone dated July 13, 2009, passed and approved by the Court, the Court finds that certain inconsistencies and clerical errors with respect to the real property to be included within the Reinvestment Zone, and that such inconsistencies and clerical errors should be corrected.

THEREFORE, be it further resolved that the Willacy County Commissioners' Court resolves to make this order nunc pro tunc correcting any inconsistencies and clerical errors with respect to the real property description of the Reinvestment Zone as contained in the public notice and the posted agenda for the July 13, 2009 Commissioners' Court meeting, and the Resolution Designating the Reinvestment Zone dated July 13, 2009, and that this Resolution be issued nunc pro tunc and filed in the minutes of the Court effective July 13, 2009.

BE IT ORDERED BY THE COMMISSIONERS' COURT OF WILLACY COUNTY, TEXAS, AS FOLLOWS:

1. THAT by order of this Commissioners' Court dated July 13, 2009, the County previously designated certain property located in Willacy County as the Magic Valley Reinvestment Zone No. 1, under the Willacy County Tax Abatement Guidelines and Criteria, having determined that the designation will contribute to the retention and expansion of primary employment or will attract major investment in the zone that will benefit the zone and will contribute to the economic development of the County, and

2. THAT the County declare eligible for property tax abatement all eligible property for commercial-industrial development, now or thereafter located in that Reinvestment Zone as authorized by the Willacy County Tax Abatement Guidelines and Criteria in reinvestment zones and Chapter 312 of the Texas Tax Code; and

3. THAT the Commissioners' Court hereby ratifies, confirms and approves the Resolution Designating the Reinvestment Zone dated July 13, 2009; and

4. THAT the Commissioners' Court hereby ratifies and confirms the designation of property described in the Resolution Designating the Reinvestment Zone dated July 13, 2009, and also attached as Exhibit A to this Order, and does hereby further ratify and confirm that such Reinvestment Zone shall be called the "Magic Valley Reinvestment Zone No. 1."

Passed and approved at this public hearing of the Willacy County Commissioners' Court at which a quorum was present on the 10th day of August, 2009, as an amendment, ratification, confirmation, and order nunc pro tunc to that certain order of the Willacy County Commissioners' Court dated July 13, 2009, originally designating the Magic Valley Reinvestment Zone No. 1 as a Reinvestment Zone under Chapter 312 of the Texas Tax Code and pursuant to the Willacy County Tax Abatement Guidelines and Criteria.

Presiding Officer of the Commissioners' Court

Commissioner Precinct 1

Commissioner Precinct 3

Commissioner Precinct 2

Commissioner Precinct 4

The foregoing Resolution is a true and correct copy of the actual Resolution passed by the Willacy County Commissioners' Court in open and regular session at the Willacy County Courthouse at _____ __.m. on the 10th day of August, 2009.

Willacy County Clerk
Willacy County, Texas

Exhibit A
Legal Description of Reinvestment Zone

Magic Valley Reinvestment Zone No. 1 to include the following property, as seen in the attached Exhibit:

The real property in Willacy County, being all of the Lots in the Withers Tract Subdivision; all of the Lots in Blocks 83, 82, 81, 80, 79, 78, 77, 76, 75, 74, 73, 72, 71, 70, 69, 68, 63, 62, 61, 60, 59, 58, 57, 56, 55, 54, 53, 52, 51, 50, 49, 48 of the Gulf Coast Irrigation Company's Subdivision; Lots 5, 6, 7, 8 of Block 67 of the Gulf Coast Irrigation Company's Subdivision; Lots 1, 2, 4, 5, 6, 7, 8, 13, 14 of Block 64 of the Gulf Coast Irrigation Company's Subdivision; Lots 1, 2, 7, 8, 9, 10, 16 of Block 47 of the Gulf Coast Irrigation Company's Subdivision; all of Lots in Hardin & Gill Subdivision out of Share #16; all of Lots in Hardin & Gill Subdivision out of Share #61; all of Lots in Hardin & Gill Subdivision out of Share #64; all of the Lots in Blocks 1, 2, 3, 4, of the E. F. Hubmer Subdivision; all of the Lots in Share #64; all of the Lots in Share #36; all of the Lots in the Sombrerito Ranch Subdivision out of Share #64; all of the Lots in Blocks 1, 2, 3, 4 of the E. H. Beise Subdivision; all of the Lots in Blocks 1, 2, 3, 4 of the Raymondville Subdivision; all of the Lots in the Engleman #1 Subdivision; all of the Lots in the Engleman #2 Subdivision; all of the Lots in the Nile Orchard Subdivision; and Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34 of the Wetzel Subdivision.

EXHIBIT 2

LOCATION OF QUALIFIED PROPERTY

All Qualified Property owned by Applicant and located within the boundaries of both the Raymondville Independent School District and *Magic Valley Reinvestment Zone No. 1* will be included in and subject to this Agreement. Specifically, all Qualified Property of Applicant located in the following sections of land is included, to wit:

The real property in Willacy County, being all of the Lots in the Withers Tract Subdivision; all of the Lots in Blocks 83, 82, 81, 80, 79, 78, 77, 76, 75, 74, 73, 72, 71, 70, 69, 68, 63, 62, 61, 60, 59, 58, 57, 56, 55, 54, 53, 52, 51, 50, 49, 48 of the Gulf Coast Irrigation Company's Subdivision; Lots 5, 6, 7, 8 of Block 67 of the Gulf Coast Irrigation Company's Subdivision; Lots 1, 2, 4, 5, 6, 7, 8, 13, 14 of Block 64 of the Gulf Coast Irrigation Company's Subdivision; Lots 1, 2, 7, 8, 9, 10, 16 of Block 47 of the Gulf Coast Irrigation Company's Subdivision; all of Lots in Hardin & Gill Subdivision out of Share #16; all of Lots in Hardin & Gill Subdivision out of Share #61; all of Lots in Hardin & Gill Subdivision out of Share #64; all of the Lots in Blocks 1,2,3,4, of the E. F. Hubmer Subdivision; all of the Lots in Share #64; all of the Lots in Share #36; all of the Lots in the Sombrerito Ranch Subdivision out of Share #64; all of the Lots in Blocks 1, 2, 3, 4 of the E. H. Beise Subdivision; all of the Lots in Blocks 1, 2, 3, 4 of the Raymondville Subdivision; all of the Lots in the Engleman #1 Subdivision; all of the Lots in the Engleman #2 Subdivision; all of the Lots in the Nile Orchard Subdivision; and Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34 of the Wetzel Subdivision.

EXHIBIT 3

DESCRIPTION OF THE APPLICANT'S QUALIFIED INVESTMENT

The proposed project will consist of a facility designed to use wind power to generate electricity (commonly referred to as a wind farm). The property will include, but is not limited to, the following: up to approximately 46 – 2.3 megawatt wind power turbine generators; or equivalent; a reinforced concrete slab supporting the weight of each turbine tower; equipment and towers used to gather meteorological data; buried and overhead electrical conductor cables (including poles) used to transport electricity from each turbine tower to an electrical substation; the electrical substation and electrical conductor cables used to transport electricity off of the project site; one or more buildings used to hold maintenance supplies, replacement parts, and related equipment; and various appurtenant equipment and small items related to the above. All of the property for which the Applicant is seeking a limitation on appraised value will be owned by the Applicant or a valid assignee pursuant to this Agreement. The facility will also require a relatively insubstantial amount of personal property.